IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 596 OF 2003

IN

SUMM.SUIT NO.3096 OF 2001

M/s Mittal Trading Co .. Plaintiff

versus

M/s Awanti Enterprises & ors .. Defendants

...

Ms.Sunita Vishwakarma i/b Devendra Sharma for Plaintiff.

Mr.Bipin Gandhi for Defendants

CORAM : D.G. KARNIK, J

DATED : 28th March 2005.

P.C:-

1. Heard learned counsel for the plaintiff and defendant no.2. None present for the defendant nos. 1,3 and 4. The plaintiff has filed on record the affidavit of service dated 24th March, 2005. The

defendant nos. 2,3 and 4 are validly served. The envelope of defendant no.1 has been returned unserved with an endorsement "not known". As no steps have been taken for service on the defendant no.1 suit against defendant no.1 is dismissed under order 9 Rule 5 of the Code of Civil Procedure.

2. Despite service, the defendant nos. 3 and 4 have not filed appearances entitling the plaintiff to a decree under Order 37 Rule 2 (3) of the Code of Civil Procedure. Despite service of the Summons for Judgment as early as on 25th July 2003 the defendant no.2 has not applied for leave to defend nor filed any affidavit in reply. The plaintiff is therefore entitled to a decree against defendant no.2 under Order 37 Rule 3 (6) of the Code of Civil Procedure.

3. Learned counsel for the plaintiff hands in the original documents. Documents are taken on record and marked Exhibit X collectively. I have perused the plaint and the documents. I have also heard learned counsel for the plaintiff and defendant no.2. The plaintiff sold, supplied and delivered to the defendants goods. Office copies of invoices are filed on record. The defendant no.1 issued a cheque for the

price of the goods suplied. The cheque was dishonoured when presented for payment. The dishonour memos as well as bank memo is filed on record. The plaintiff issued a notice of demand. Office copy of the notice and courier receipt are filed on record. The defendant no.1 did not reply to the notice nor made the payment. The defendant nos. 2 to 4 being the partners of defendant no.1 are liable.

4. Learned counsel for the defendant no.2 states that invoices are bogus and the suit transaction is only a money lending transaction. The invoices bear the signature with the rubber stamp of defendant no.1. Defendant no.1 has also issued the cheque for the price of the goods. Besides, defendant no.2 has not filed any affidavit in reply. Hence, mere oral submission that it is a money lending transaction and is hit by the Bombay Money Lenders Act cannot be accepted. Hence, I pass the following order :

> " Summons for Judgment is made absolute against the defendant no.2 and suit is decreed ex parte against defendant nos. 3 and 4 as follows :

The defendant nos. 2,3 and 4 shall pay to the plaintiff a sum of Rs.3,12,178.91 together with interest on principal asum of Rs.2,40,802/- at 6 % from the date of the suit till payment and all costs of the suit. Suit is dismissed against the defendant no.1 under order 9 Rule 5 of the Code of Civil Procedure.

D.G.KARNIK, J